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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,609	05/08/2001	Gregory T. Stauf	Atmi-497	8601

25559 7590 09/11/2003

ATMI, INC.
7 COMMERCE DRIVE
DANBURY, CT 06810

EXAMINER

LE, THAO X

ART UNIT	PAPER NUMBER
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2814

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/681,609

Applicant(s)

STAUF ET AL.

Examiner

Thao X Le

Art Unit

2814

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

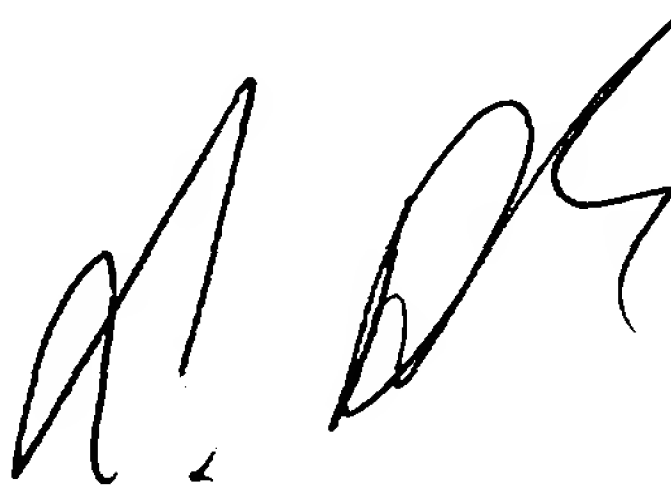
Claim(s) allowed: _____.

Claim(s) objected to: 27.Claim(s) rejected: 1-26,28-39.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: 1) The Applicant argues that Tsu's "metal silicide layer 20" is different from the "metal alloy" of the claimed invention. This is not persuasive because it has been held that the use of the term "comprise" leaves a claim open for inclusion of materials or step other than those recited in the claim. Ex parte Davis, 80 USPQ 448 (PTO Bd. App. 1948. Use of term "comprises" does not excluded the presence of other elements. In re Hunter, 288 F.2d 930, 129 USPQ 25 (CCPA 1961). 2) the Applicant argues that 'there is no reason why one would change the specific barrier composition TiN of Lu with Tang's TiAlN. This is not persuasive because Tang clearly discloses TiN or TiAlN can be used alternatively as diffusion barrier, column 9 line 26-28. Also, substitution of equivalent requires no express motivation as long as the prior art recognizes the equivalency. In re Fount 213 USPQ 532 (CCPA 1982); In re Siebentritt 152 USPQ 618 (CCPA 1967).


~~LONG PHAM~~
~~PRIMARY EXAMINER~~

LONG PHAM
PRIMARY EXAMINER